

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>J.R., Appellant</b> )	)	
)	)	
<b>and</b> )	)	<b>Docket No. 24-0852</b>
)	)	<b>Issued: November 14, 2024</b>
<b>U.S. POSTAL SERVICE, PORTERVILLE POST</b> )	)	
<b>OFFICE, Porterville, CA, Employer</b> )	)	
_____ )	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 18, 2024 appellant filed a timely appeal from an April 18, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board, explaining that oral argument would provide the best opportunity to ask and answer questions. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument as the case can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the April 18, 2024 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$56,386.33 for the period July 1, 2019 through August 12, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$575.00 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

On March 25, 2003 appellant, then a 49-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained injuries to her knees due to factors of her federal employment, including walking her postal route. She noted that she first realized the relation of her condition to her federal employment on March 10, 2003.<sup>4</sup> OWCP initially accepted the claim for left knee medial meniscus tear, right knee chondromalacia patella, and internal derangement of the right knee. It subsequently expanded the acceptance of the claim to include additional knee conditions and consequential emotional conditions. Appellant stopped work on April 15, 2003 and underwent multiple surgeries to her knees, including a right total knee arthroplasty on January 19, 2004 and a left knee total arthroplasty on November 1, 2004. OWCP paid her wage-loss compensation for total disability on the supplemental rolls, effective April 15, 2003, and on the periodic rolls, effective May 18, 2003.

The notification of personnel action (PS Form 50) reveals that appellant's retirement coverage is under the Federal Employees Retirement System (FERS).

On June 14, 2023 OWCP requested information from SSA regarding appellant's potential receipt of FERS/SSA dual benefits.

OWCP thereafter received a completed FERS/SSA dual benefits form from SSA dated July 19, 2023. The form indicated that appellant received SSA age-related retirement benefits as of July 2019 and provided SSA age-related retirement benefit rates with and without a FERS offset. Beginning July 2019, the SSA rate with FERS was \$1,914.70 and without FERS was \$846.00. Beginning December 2019, the SSA rate with FERS was \$1,945.30 and without FERS was \$859.50. Beginning December 2020, the SSA rate with FERS was \$1,970.50 and without FERS was \$870.60. Beginning December 2021, the SSA rate with FERS was \$2,086.70 and without FERS was \$921.90. Beginning December 2022, the SSA rate with FERS was \$2,268.20 and without FERS was \$1,002.10.

In a FERS offset overpayment calculation worksheet dated September 6, 2023, OWCP used the information provided by SSA on July 19, 2023 to calculate the 28-day FERS offset for the relevant periods, and calculated a total overpayment in the amount of \$56,386.33. It found that from July 1 through November 30, 2019 appellant received an overpayment in the amount of

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<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx444. Appellant previously filed a traumatic injury claim (Form CA-1) for a March 27, 2022 injury. OWCP assigned that claim OWCP File No. xxxxxx989 and accepted it on May 21, 2002 for sprains of the neck, thoracic, and lumbar spines. OWCP has administratively combined OWCP File Nos. xxxxxx989 and xxxxxx444, with the latter file designated as the master file.

\$5,390.46; from December 1, 2019 through November 30, 2020 appellant received an overpayment in the amount of \$13,101.23; from December 1, 2020 through November 30, 2021 appellant received an overpayment in the amount of \$13,325.03; from December 1, 2021 through November 30, 2022 appellant received an overpayment in the amount of \$14,016.00; and from December 1, 2022 through August 12, 2023 appellant received an overpayment in the amount of \$10,643.61.

Beginning September 8, 2023, OWCP adjusted appellant's net wage-loss compensation to \$1,116.29 per 28-day pay period to include the offset of her SSA age-related retirement benefits attributable to her federal service. It notified her of this change on September 6, 2023.

In a preliminary overpayment determination dated October 30, 2023, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$56,386.33, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It explained each period in the FERS offset calculation and found a total overpayment of \$56,386.33. OWCP further advised appellant of its preliminary determination that she was without fault in the creation of the overpayment. It requested that she complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20), and submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records to support income and expenses. Additionally, OWCP notified appellant that she could request a final decision based on the written evidence or a prerecoumment hearing within 30 days.

On November 22, 2023 appellant requested waiver of recovery of the overpayment and a prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review. She attached a completed Form OWCP-20 dated November 22, 2023, wherein she noted total monthly income of \$9,701.00 and total monthly expenses of \$11,900.00. Appellant also reported a total of \$52,340.00 in assets.

An oral hearing was held on February 15, 2024.

Appellant thereafter submitted a statement of her budget.

By decision dated April 18, 2024, OWCP's hearing representative finalized OWCP's preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$56,386.33 for the period July 1, 2019 through August 12, 2023, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits, without an appropriate offset. The hearing representative further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience. The hearing representative required recovery of the overpayment by deducting \$575.00 from appellant's continuing compensation payments every 28 days.

#### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the

performance of his or her duty.<sup>5</sup> Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>6</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.<sup>7</sup> FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>8</sup>

### ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$56,386.33 for the period July 1, 2019 through August 12, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset.

The evidence of record indicates that, while appellant was receiving compensation for wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.<sup>9</sup> The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period July 1, 2019 through August 12, 2023. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's age-related retirement benefit rates with FERS and without FERS for specific periods from July 1, 2019 through August 12, 2023. OWCP provided its calculations for each relevant period based on SSA's information and determined that she received an overpayment in the amount of \$56,386.33.

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Id.* at § 8116.

<sup>7</sup> 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>8</sup> FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

<sup>9</sup> *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

The Board has reviewed OWCP's calculation of benefits received by appellant for the period July 1, 2019 through August 12, 2023 and finds that it properly determined that an overpayment of compensation in the amount of \$56,386.33 was created.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.<sup>11</sup> Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>12</sup>

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.<sup>13</sup> An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.<sup>14</sup> Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.<sup>15</sup> An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.<sup>16</sup> Non liquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.<sup>17</sup>

Section 10.437 of OWCP's implementing regulations provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be

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<sup>10</sup> See *R.F.*, Docket No. 20-0159 (issued October 15, 2020); see *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

<sup>11</sup> 5 U.S.C. § 8129(a)-(b).

<sup>12</sup> *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *L.S.*, 59 ECAB 350 (2008).

<sup>13</sup> 20 C.F.R. § 10.436(a)(b).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

<sup>15</sup> *Id.* at Chapter 6.400.4a(2).

<sup>16</sup> *Id.* at Chapter 6.400.4b(3).

<sup>17</sup> *Id.* at Chapter 6.400.4b(3)(a), (b).

made, gives up a valuable right or changes his or her position for the worse.<sup>18</sup> OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.<sup>19</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered. As noted above, even if a claimant is found without fault in the creation of the overpayment, recovery of the overpayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.<sup>20</sup>

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA, because she has not shown both that she needs substantially all of her current income to meet ordinary and necessary living expenses, and that her assets do not exceed the allowable resource base. On the Form OWCP-20, appellant reported total assets of \$52,340.00.

As noted above, in determining whether recovery of the overpayment would defeat the purpose of FECA, OWCP considers whether assets exceed a resource base of \$6,200.00 for an individual.<sup>21</sup> Accordingly, the Board finds that appellant, who reported total assets of \$52,340.00, has not met the standard for waiver of recovery of the overpayment, because her assets exceed the allowable resource base.<sup>22</sup> Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider whether she needs substantially all of her current income to meet ordinary and necessary living expenses.<sup>23</sup>

The Board also finds that appellant has not established that she was entitled to waiver on the basis that recovery of the overpayment would be against equity and good conscience. Appellant has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt, or that she has relinquished a valuable right or changed her position for the worse in reliance on the payments which created the overpayment.<sup>24</sup>

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<sup>18</sup> 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

<sup>19</sup> *Supra* note 14 at Chapter 6.400.4c(3).

<sup>20</sup> *Supra* note 19.

<sup>21</sup> *Supra* note 16.

<sup>22</sup> *S.W.*, Docket No. 20-0363 (issued November 23, 2020); *H.F.*, Docket No. 17-0101 (issued September 5, 2017).

<sup>23</sup> *S.R.*, Docket No. 20-1416 (issued September 8, 2020); *M.H.*, Docket No. 19-1497 (issued September 9, 2020).

<sup>24</sup> *See B.C.*, Docket No. 19-0629 (issued June 2, 2020); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.<sup>25</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.<sup>26</sup>

Section 10.441(a) of OWCP's regulations<sup>27</sup> provides in pertinent part that when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.<sup>28</sup>

The Federal (FECA) Procedure Manual provides that, when an individual fails to provide the requested information on income, expenses and assets, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>29</sup> The Federal (FECA) Procedure Manual further provides that, if a response is received, the financial information should be thoroughly examined and the claims examiner should set a reasonable rate of repayment.<sup>30</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that OWCP improperly required recovery of the overpayment by deducting \$575.00 from appellant's continuing compensation payments every 28 days.

As explained above, OWCP's procedures provide that, in instances where the claimant fails to provide the requested financial information, OWCP should set the rate of recovery at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.<sup>31</sup> In this case, however, not only did appellant respond to the preliminary overpayment determination by submitting a completed Form OWCP-20, reporting her income, assets, and expenses, but OWCP also required recovery at a rate higher than 25 percent. The record establishes that OWCP paid appellant \$1,116.29 in net compensation as of September 8, 2023.

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<sup>25</sup> *S.W.*, Docket No. 20-0363 (issued November 23, 2020).

<sup>26</sup> 20 C.F.R. § 10.441; *see M.P.*, Docket No. 18-0902 (issued October 16, 2018).

<sup>27</sup> *Id.* at § 10.441(a).

<sup>28</sup> *Id.*; *see C.M.*, Docket No. 19-1451 (issued March 4, 2020).

<sup>29</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.500.8c(1) (September 2018).

<sup>30</sup> *Id.* at 6.500.8c(2).

<sup>31</sup> *Supra* note 29.

The Board notes that 25 percent of \$1,116.29 is \$279.07. The Board, therefore, finds that OWCP abused its discretion by deducting \$575.00 from appellant's continuing compensation payments, every 28 days.<sup>32</sup>

**CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$56,386.33 for the period July 1, 2019 through August 12, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment. The Board also finds that OWCP improperly required recovery of the overpayment by deducting \$575.00 from her continuing compensation payments every 28 days.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 18, 2024 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: November 14, 2024  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>32</sup> See *supra* note 33. See also *R.M.*, Docket No. 19-1508 (issued July 6, 2022); *L.M.*, Docket No. 21-0455 (issued February 28, 2022); *M.W.*, 20-1107 (issued March 17, 2021).